

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

DOCKETED
USNRC

Before the Presiding Officer

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In the Matter of DUKE COGEMA
STONE & WEBSTER

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Docket No. 070-03098

Mixed Oxide Fuel Fabrication Facility
(Construction Authorization Request)

**Duke Cogema Stone & Webster's Answer
to Georgians Against Nuclear Energy's
Request for Hearing Regarding
Mixed Oxide Fuel Fabrication Facility Construction Authorization Request**

I. INTRODUCTION

Duke Cogema Stone & Webster ("DCS") hereby submits its Answer to the Request for Hearing ("Request") submitted by Georgians Against Nuclear Energy ("GANE") regarding the Mixed Oxide Fuel Fabrication Facility ("MOX Facility") Construction Authorization Request ("CAR"). DCS, pursuant to 10 CFR § 70.22(f), has submitted to the Nuclear Regulatory Commission ("NRC" or "Commission") a CAR for a proposed MOX Facility to be located on the U.S. Department of Energy's ("DOE") Savannah River Site ("SRS") in South Carolina.¹ DCS is the contractor that has been selected by the DOE to design, construct, operate and deactivate the MOX Facility as part of the U.S. government's overall program to disposition surplus weapons-grade plutonium in the wake of the ending of the Cold War.

¹ Letter from Robert H. Idhe to William F. Kane, February 28, 2001.

On April 18, 2001, the NRC published in the Federal Register a "Notice of Acceptance for Docketing of the Application, and Notice of Opportunity for a Hearing, on an Application for Authority to Construct a Mixed Oxide Fuel Fabrication Facility" ("Notice").² On May 17, 2001, GANE requested a hearing on the CAR.

Under the Atomic Energy Act of 1954, as amended ("AEA"), and NRC regulations, a hearing on the MOX Facility CAR is not mandatory. Rather, a hearing will only be held upon the request of a person or organization whose interest may be affected if the CAR is approved.³ The party requesting the hearing bears the burden of demonstrating the need for a hearing.⁴ In this case, such a demonstration will entail two separate but essential showings: first, that GANE has legal standing to request a hearing regarding the MOX Facility CAR; and second, that GANE has at least one admissible contention related to the CAR.⁵

GANE apparently has chosen to submit both its arguments on standing and its contentions in a single pleading. Accordingly, this Answer responds to both GANE's standing arguments and its contentions.

Section II below shows that GANE has not demonstrated standing to obtain a hearing on the MOX Facility CAR in its own right (organizational standing) or on behalf of its members (representational standing). Section III demonstrates that, even if GANE has standing, each of its contentions is inadmissible. Accordingly, GANE's Request should be denied.

² 66 *Fed. Reg.* 19,994 (2001).

³ Atomic Energy Act of 1959, as amended, § 189(a), 42 U.S.C. § 2239(a); 10 CFR § 2.1205 (emphasis supplied).

⁴ See *Babcock & Wilcox* (Pennsylvania Nuclear Services Operations, Parks Township, Pennsylvania), LBP-94-4, 39 NRC 47, 48 (1994).

⁵ 66 *Fed. Reg.* at 19,996.

II. ANE HAS NOT DEMONSTRATED STANDING

The NRC applies judicial concepts of standing.⁶ Accordingly, ANE must demonstrate that if the CAR is approved by the NRC:

- (1) ANE will likely suffer a direct, palpable injury that is within the zone of interests protected by the AEA or the National Environmental Policy Act of 1969 ("NEPA");
- (2) the injury is traceable to the NRC's approval of the MOX Facility CAR (*i.e.*, causation); and
- (3) the injury can be redressed by a decision in this proceeding.⁷

These elements constitute the "irreducible constitutional minimum" requirements for standing in NRC proceedings.⁸

A. ANE Has Not Demonstrated Organizational Standing

As an initial matter, the Request is deficient because there is no indication that it was filed by a person authorized to act on behalf of the organization. The Request is signed by "Glenn Carroll." This individual does not state her capacity within ANE. A mere member of an organization may not file a hearing request on behalf of that organization. Rather, pleadings filed with the NRC on behalf of an organization must be signed by a person who has been authorized by the organization to represent it.² ANE is well aware of this requirement, since one of its petitions in another proceeding was not accepted for failure to satisfy this

⁶ See, e.g., *Georgia Inst. of Tech.* (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995); *Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), ALAB-333, 3 NRC 804 (1976).

⁷ See *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996); *Westinghouse Elec. Corp.* (Export to South Korea), CLI-80-30, 12 NRC 253, 258-59 (1980).

⁸ *Bennett v. Spear*, 520 U.S. 154, 167 (1997); *Department of the Army* (Aberdeen Proving Ground, Maryland), LBP-99-38, 50 NRC 227, 229 (1999).

² *Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), LBP-90-29, 32 NRC 89, 92 (1990).

requirement.¹⁰ Since there is no indication that the Request was filed by an authorized representative of GANE, the Request should be denied.

Second, GANE has not provided any bases for organizational standing other than several general statements that it supports immobilization of plutonium over MOX fuel fabrication, and that it has a general interest in protecting Georgians' health and safety.¹¹ These bases are insufficient to confer standing upon GANE as an organization.

A mere "interest in the problem" is insufficient to give an organization standing.¹² In *Sierra Club v. Morton*, the U.S. Supreme Court stated that an organization could not predicate its standing to enjoin agency approval of a commercial development in a national game refuge upon an asserted "special interest in the conservation and the sound maintenance of the national parks, game refuges and forests of the country."¹³ The basis for the holding was that:

[A] mere 'interest in a problem,' no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render the organization 'adversely affected' or 'aggrieved'...[I]f a 'special interest' in this subject were enough to entitle the Sierra Club to commence this litigation, there would appear to be no objective basis upon which to disallow a suit by any other bona fide 'special interest' organization, however small or short-lived....¹⁴

¹⁰ *Id.* In the *Vogtle* proceeding, the Licensing Board allowed GANE to cure these defects under the provisions of 10 CFR § 2.714(a)(3), which enables a petitioner to amend its petition at any time 15 days prior to the first prehearing conference. *Id.*, at 91-93. However, Section 2.714(a)(3) is contained in Subpart G to Part 2, and the current proceeding is being conducted under Subpart L. See 66 *Fed. Reg.* at 19,995. There is no similar provision in Subpart L. The NRC's Notice specified only that the Presiding Officer will "evaluate [contentions] using the standards set forth in 10 CFR 2.714(b)(2)." *Id.* at 19,996. It does not make all of Section 2.714 applicable to this proceeding. Therefore, in this proceeding, GANE does not have the right to amend its Request to cure this defect.

¹¹ *Request*, at 1-2, 11.

¹² *Sierra Club v. Morton*, 405 U.S. 727, 739 (1972); *Dellums v. NRC*, 863 F.2d 968, 972 (D.C. Cir. 1988).

¹³ *Sierra Club*, 405 U.S. at 730.

¹⁴ *Id.* at 739.

Under this well-established precedent, GANE has not established organizational standing because it has not alleged facts showing that it will be adversely affected. To allow intervention without such a showing would be to allow any individual or organization to “vindicate their own value preferences through the judicial process.”¹⁵

B. GANE Has Not Demonstrated Representational Standing

To invoke representational standing, an organization must show that one of its members has standing in her own right and has authorized the organization to represent her interests.¹⁶ GANE relies entirely upon the two-page affidavit of Ms. Susan Bloomfield as its basis for representational standing. Although the affidavit states that Ms. Bloomfield “authorize[s]” GANE to represent her, there is no indication that Ms. Bloomfield is a member of GANE. An organization may only represent its members, not third parties.¹⁷ GANE is also well aware of this requirement since one of its petitions in another proceeding initially was not accepted for failure to satisfy this requirement.¹⁸ Furthermore, as discussed below, even if Ms. Bloomfield is a GANE member, her affidavit is insufficient to show that she has standing to participate in this proceeding.

In order to demonstrate standing, Ms. Bloomfield must first show that the approval of the MOX Facility CAR is likely to cause her to suffer distinct and palpable injury:¹⁹

[T]he asserted injury must be ‘distinct and palpable,’ and
‘particular [and] concrete,’ as opposed to being ‘conjectural...[.]’

¹⁵ *Allied General Nuclear Services* (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 422 (1976), citing *Sierra Club*, 405 U.S. at 740.

¹⁶ See *Hunt v. Washington State Apple Adver. Comm’n*, 432 U.S. 333, 343 (1977); see also *Houston Lighting & Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 396-97 (1979).

¹⁷ *Georgia Inst. of Tech.*, 42 NRC at 114 (indicating that an affiant’s stated interest in having GANE represent him is insufficient without an affirmative statement that the affiant is also a member of GANE).

¹⁸ *Id.*

¹⁹ See *Shieldalloy Metallurgical Corp.* (Cambridge, Ohio Facility), CLI-99-12, 49 NRC 347, 353 (1999).

hypothetical,' or 'abstract'... [W]hen future harm is asserted, it must be 'threatened,' 'certainly impending,' and 'real and immediate.'²⁰

An injury in fact showing also "requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured."²¹

Ms. Bloomfield's statements about injury focus on a vague fear of harm to her life and health.²² In each case, however, she fails to particularize how the NRC's approval of the CAR might adversely affect her life or health. Nor should the NRC read between the lines of Ms. Bloomfield's statements to particularize her injuries for her. "In determining whether injury in fact has been adequately set forth, the NRC is limited to assertions actually pleaded."²³ NRC regulations "do not permit the kind of 'notice pleading'" provided for in the Federal Rules of Civil Procedure.²⁴ Rather, a requestor must provide detailed descriptions of its position in order to support standing.²⁵ The required detailed descriptions are absent from Ms. Bloomfield's affidavit.

²⁰ *Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Unit 1)*, LBP-92-4, 35 NRC 114, 121 (1992), quoting *Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983); *Linda R.S. v. Richard D.*, 410 U.S. 614, 617 (1973); and *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979) (quoting *Pennsylvania v. West Virginia*, 262 U.S. 553, 593 (1923)).

²¹ *Sierra Club*, 405 U.S. at 734.

²² Affidavit, at ¶ 2 ("I believe my life and health are jeopardized"); ¶ 3 ("my personal health could suffer"); ¶ 4 ("I am less likely to suffer injury from it").

²³ *Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station)*, LBP-92-23, 36 NRC 120, 127 (1992). See also *Babcock and Wilcox (Apollo, Pennsylvania Fuel Fabrication Facility)*, LBP-92-24, 36 NRC 149, 153 (1992).

²⁴ *Shieldalloy Metallurgical Corp.*, CLI-99-12, 49 NRC at 353-554.

²⁵ See 10 CFR § 2.1205(e) (requiring a requestor to "describe in detail," among other things, its basis for standing).

1. Proximity to the Proposed MOX Facility

Ms. Bloomfield claims that she resides in Augusta, Georgia, lives “less than 20 miles” from the proposed MOX Facility, and that her “life and health are jeopardized” and her “personal health could suffer serious consequences” by DCS’ plans to build and operate the MOX facility at SRS.²⁶ Residence less than 20 miles from the MOX Facility is not sufficient to confer standing. Although the NRC has presumed standing in power reactor license proceedings where persons have resided within “the zone of possible harm from the nuclear reactor or source of radioactivity” (generally considered to be within a 40-50 mile radius),²⁷ such a presumption is unavailable in this non-reactor case. The Commission has held that in cases not involving the construction, operation, or major alteration of a nuclear reactor or facility involving an obvious potential for significant offsite consequences, 50-mile proximity is insufficient to establish standing.²⁸

In particular, the Commission has held that a presumption of standing for persons residing within a 50-mile radius “is not applied in material cases.”²⁹ While there may be a presumption of standing based upon proximity in fuel cycle facilities involving significant sources of radioactivity producing an obvious potential for offsite consequences, such a presumption applies only “at distances much closer than 50 miles.”³⁰

²⁶ Affidavit, at ¶¶ 2, 3.

²⁷ *Florida Power and Light Co.* (Turkey Point, Units 3 and 4), LBP-01-06, 2001 WL 261863, at*3 (2001).

²⁸ *See Florida Power and Light Co.* (St. Lucie, Units 1 and 2), CLI-89-21, 30 NRC 325, 329-30 (1989) (holding that in cases not involving the construction, operation, or major alteration of a nuclear reactor or facility involving an obvious potential for significant offsite consequences, 50-mile proximity is insufficient to establish standing).

²⁹ *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 n .22 (1994).

³⁰ *Id.*

DCS is not aware of any case in which a petitioner has been afforded standing based upon residence within 20 miles of a materials or fuel cycle facility.³¹ For example, in *Babcock and Wilcox*, the petitioners lived within two miles of a facility seeking a license amendment to allow extensive decommissioning activities for a fuel fabrication facility. The NRC held that:

It is not enough for the Petitioners simply to assert that they live close to the...facility. To meet their burden of proving that they have the requisite injury in fact, the Petitioners also must provide some evidence of a causal link between the distance they reside from the facility and injury to their legitimate interests.³²

This ruling is especially applicable in the case of the MOX Facility. The proposed MOX Facility is to be located almost six miles inside the SRS boundary at its closest point.³³ The analysis in the CAR shows that any radiological consequences at the SRS boundary as a result of an accident would be low - - approximately 10 mrem for the most bounding accident.³⁴ Obviously, the dose to Ms. Bloomfield, who resides almost 20 miles away, would be substantially less than that. Therefore, it should not be presumed that she would be affected by an accident at the MOX Facility based merely upon the location of her residence.

In accordance with the ruling in *Babcock and Wilcox*, it is incumbent upon Ms. Bloomfield to show how an accident at the MOX Facility could affect her. Instead, she has merely expressed her "belief" that her life and health would be jeopardized by the proposed MOX Facility. Such a statement is not sufficient to establish a plausible, non-conjectural injury-

³¹ DCS has identified one proceeding involving renewal of both a reactor operating license and its related special nuclear material license, in which a Licensing Board granted standing to an individual who lived approximately 30 miles away from the facility. However, the facility at issue was a reactor, and neither the Applicant nor the NRC Staff raised the proximity issue. General Electric Company (GETR Vallecitos), LBP-83-19, 17 NRC 573, 577 (1983).

³² *Babcock & Wilcox* (Apollo, Pennsylvania Fuel Fabrication Facility), LBP-93-4, 37 NRC 72, 84 (1993).

³³ See MOX CAR § 1.3.1.1

³⁴ MOX Facility CAR, Section 5.5.3 and Table 5.5-26.

in-fact. As a result, Ms. Bloomfield has not provided a sufficient basis to establish her standing to intervene.

2. Plutonium Transport Near Ms. Bloomfield's Home

Ms. Bloomfield also states she is concerned that “[p]lутonium would travel near [her] home en route to the Savannah River Site for processing.”³⁵ Transportation of plutonium to SRS is under the jurisdiction and control of the DOE.³⁶ Plutonium being transported to SRS for ultimate use in the MOX Facility would be taken to the Plutonium Disassembly and Conversion Facility (“PDCF”), which is likewise under the jurisdiction and control of the DOE.³⁷ Thus, any assertion regarding the safety of DOE’s transportation of plutonium feed material to the PDCF is beyond the scope of the proceeding and is not appropriate for consideration as a basis for standing. As the Commission has held, “[i]ntervention may not be based on claims pertaining to matters that are beyond the scope of this proceeding”.³⁸

In any event, a claim similar to Ms. Bloomfield’s was rejected by the NRC in *Northern States Power Co.*, where a petitioner claimed standing on the basis that truck shipments of radioactive waste would be routed within a mile of his home, and that a transportation accident would expose him to unacceptable levels of radioactivity.³⁹ Similarly, in *Exxon Nuclear Co., Inc.*, a petitioner was denied standing based upon an allegation that spent fuel rods would be shipped over train tracks “very near to her home.”⁴⁰ The NRC held that petitioner’s:

³⁵ Affidavit, at ¶ 3.

³⁶ SPD Final EIS, Sec. 2.4.4.1, p. 2-37.

³⁷ *Id.*

³⁸ *Westinghouse Electric Corp.* (Export to South Korea), CLI-80-30, 12 NRC 253, 260 (1980).

³⁹ *Northern States Power Co.* (Pathfinder Atomic Plant), LBP-90-3, 31 NRC 40, 42 (1990).

⁴⁰ *Exxon Nuclear Co., Inc.* (Nuclear Fuel Recovery and Recycling Center), LBP-77-59, 6 NRC 518, 519 (1977).

allegations of possible physical and/or economic injury are entirely speculative in nature, being predicated on the tenuous assumptions that the spent fuel will be shipped by the named carrier and that an accident might occur in the area proximate either to her residence or to her rental property.⁴¹

For similar reasons, Ms. Bloomfield's allegations regarding transportation are not a sufficient basis for standing in this proceeding.

In summary, Ms. Bloomfield has failed to show that she is likely to suffer a direct, palpable injury to interests protected by NEPA or the AEA. Since Ms. Bloomfield has not established standing in her own right, her affidavit cannot provide a basis for GANE's standing.

III. GANE HAS NOT SUBMITTED AN ADMISSIBLE CONTENTION

GANE's twelve-page Request consists almost entirely of alleged "deficiencies" in the CAR. These allegations appear to constitute GANE's proposed contentions in this proceeding.⁴² Accordingly, DCS has evaluated each of these alleged deficiencies to determine whether they satisfy the standards for an admissible contention.

A. Legal Standards Governing Admissibility of Contentions

In order to intervene in an NRC licensing proceeding, an individual or group must demonstrate both that it has standing, and "proffer with specificity at least one admissible contention."⁴³ Under the NRC's Notice,⁴⁴ the admissibility of contentions is governed by 10 CFR § 2.714(b)(2), which requires that "[e]ach contention must consist of a specific statement of the issue of law or fact to be raised or controverted." Under Section 2.714(b)(2), the petitioner must provide the following information with respect to each contention:

⁴¹ *Id.* at 520.

⁴² *Request*, at 2.

⁴³ *Yankee Atomic Electric Company* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 248 (1996); *Gulf States Utility Company* (River Bend Station, Unit 1), CLI-94-10, 40 NRC 43, 51 (1994).

⁴⁴ 66 *Fed. Reg.* at 19,996.

- (i) A brief explanation of the bases of the contention;
- (ii) A concise statement of the alleged facts or expert opinion which support the contention . . . , together with references to those specific sources and documents of which the petitioner . . . intends to rely to establish those facts or expert opinion;
- (iii) Sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This showing must include references to the specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.

"A contention that fails to meet any one of these standards must be dismissed, as must a contention that, even if proven, would be of no consequence because it would not entitle a petitioner to any relief."⁴⁵ When a mandatory hearing is not required, licensing boards should "take the utmost care" to assure that at least one good contention is advanced because, absent successful intervention, no hearing need be held.⁴⁶

In addition, "[a] petitioner's proffered contentions must be confined to the subjects delineated by the hearing notice and contentions concerning matters outside that defined scope cannot be admitted."⁴⁷ In this case, the NRC's Notice limits the scope of any hearing to contentions on DCS' CAR, Environmental Report, and/or Quality Assurance Plan.⁴⁸ As is clearly reflected in the NRC's Notice, issues related to potential future operation of the MOX Facility will be addressed during a later phase of the hearing.⁴⁹

⁴⁵ *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-13, 47 NRC 360, 365 (1998).

⁴⁶ *Cincinnati Gas and Electric Co.* (William H. Zimmer Nuclear Power Station), ALAB-305, 3 NRC 8, 12 (1976).

⁴⁷ *Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Unit No. 3), LBP-98-28, 48 NRC 279; 1998 WL 817407, at *3 (1998); citing *Public Service Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976).

⁴⁸ 66 *Fed. Reg.* at 19,996.

⁴⁹ *Id.* at 19,995.

GANE's Request offers an introductory section stating its preference for immobilization of plutonium over MOX fuel fabrication. Then, in thirty-one unnumbered bullets, GANE alleges that there are deficiencies in the CAR. As demonstrated below, each of GANE's contentions fails to meet NRC requirements for admission. Section B below discusses GANE's preference for immobilization. Sections C through F below discuss each of GANE's bulleted contentions.⁵⁰

B. A Preference for Immobilization is Outside the Scope of this Proceeding

The first page and a half of the Request outlines GANE's preference for immobilization of plutonium over MOX fuel fabrication. The Request states that "[s]ince the mission of the [NRC] is to protect public health and safety, GANE observes that it is an immobilization facility which is required to protect public health from use of plutonium as weapons . . ."⁵¹

The U.S. government surplus plutonium disposition policy is set by the DOE, which has decided to use both immobilization and MOX fuel fabrication to carry out that policy.⁵² The NRC has no role or authority to reverse or evaluate DOE's policy. Accordingly, this contention is outside the scope of this proceeding and should be rejected.

C. The Alleged Off-Site Impacts of Accidental Releases Are Inadmissible

GANE proposes six contentions alleging that the CAR is deficient in its treatment of the potential for off-site impacts from accidental releases at the MOX Facility.⁵³ As discussed below, each of these contentions is deficient.

⁵⁰ As an aid to sorting and addressing GANE's unnumbered contentions, each numbered subsection *within* Sections C through F corresponds to the sequence of the bullets within GANE's Request (*e.g.*, subsection 15 below corresponds to the fifteenth bulleted contention in GANE's Request).

⁵¹ Request, at 2.

⁵² See, *e.g.*, SPD EIS Record of Decision, January 4, 2000.

⁵³ Request, at 1, 2.

1. Compliance with DOE Seismic Standards

GANE contends that the “design basis for the facility . . . does not appear to meet seismic standards enforced for other facilities at Savannah River Site.” GANE also refers to the geologic fault that runs through Charleston, S.C., implying that the MOX Facility would not be able to “withstand an earthquake.”

Section 1.3.6 of the CAR contains an extensive analysis of the seismicity of the site (including a discussion of the Charleston fault). The same section of the CAR also describes the design basis earthquake (DBE) for the MOX Facility, and contains an extensive analysis which justifies the DBE. GANE’s contention does not identify any deficiency in this analysis or even cite to any of this discussion in the CAR. Accordingly, GANE’s contention lacks the required specificity and references to specific portions of the CAR, and therefore should be denied for failure to satisfy 10 CFR § 2.714(b)(2)(iii).

Furthermore, even if GANE were correct that the MOX Facility has a different seismic standard than other SRS facilities, GANE would not be entitled to relief on this point. The MOX Facility will be licensed and regulated by the NRC, unlike the other SRS facilities. GANE has not alleged that the MOX Facility will violate NRC seismic requirements or guidance. Accordingly, the contention does not identify any material issue, and should be rejected under 10 CFR § 2.714(b)(2)(iii).

2. Use of HEPA Filters

GANE alleges that DCS is proposing to use “inferior HEPA filters” instead of “better, more expensive sand filters.” GANE further alleges that this situation is exacerbated by the vulnerability of HEPA filters to fire and the pyrophoric nature of plutonium. Finally, GANE

alleges that DOE facilities have had difficulty in containing powdered plutonium and that plutonium has collected in air ducts.⁵⁴

GANE has not provided any legal or factual basis for its contention that HEPA filters are “inferior” or unacceptable. There is nothing in the NRC’s regulations that prohibits use of such filters. HEPA filters are widely used throughout nuclear facilities, and various NRC guidance documents recognize that they may be used in ventilation systems.⁵⁵ Furthermore, Section 11.4 of the CAR describes DCS’ plans for using HEPA filters at the MOX Facility, including the provisions for protecting HEPA filters against fires. GANE has not identified any deficiency or omission in these plans.⁵⁶

GANE has also provided no citations or expert opinion for its claims that DOE facilities have had difficulty containing plutonium or that plutonium has collected in air ducts. Even if these allegations were accepted, GANE has not explained how the experience at other DOE facilities is applicable to the MOX Facility, or provided any basis for believing that the MOX Facility would be susceptible to the same difficulties. Therefore, GANE’s contention does not satisfy 10 CFR § 2.714(b)(2) and should be rejected.

3. Lack of An Emergency Plan

GANE next states that the “lack of an Emergency Management Plan” will threaten “Georgians’ health, property and natural environs”⁵⁷ This contention is beyond the scope

⁵⁴ *Request*, at 2.

⁵⁵ *See, e.g.*, NUREG-1718, Standard Review Plan for the Review of an Application for a Mixed Oxide (MOX) Fuel Fabrication Facility, Section 11.4.5.2.J.i (NUREG-1718); NUREG-1520, Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility, Appendix A.3; NUREG-0800, Standard Review Plan for the Review of Safety Analysis Reports For Nuclear Power Plants, Sections 6.5.1, 6.5.3, 11.1, and 11.3.

⁵⁶ Contrary to GANE’s allegation, the plutonium used in the MOX Facility is already oxidized and is therefore not in a pyrophoric form as implied. *See* MOX Facility CAR, Sec. 1.1.4.

⁵⁷ *Request*, at 2.

of the CAR proceeding. As stated in the NRC's Notice, "[c]ontentions shall be limited to matters within the scope of the DCS application for authority to construct a MOX fuel fabrication facility."⁵⁸ Issues related to emergency planning are outside the scope of the CAR. In particular, DCS need not submit an emergency plan until it submits its application to possess and use licensed materials.⁵⁹ Accordingly, the contention is premature, raises an issue that is outside the scope of this proceeding, and should be denied.⁶⁰

4. Criticality Data

GANE alleges that there is a "lack of data on unique criticality concerns posed by weapons-grade plutonium," that the MOX experience of DCS is limited to reactor-grade plutonium fuel production, and that a criticality event "poses a real threat to Georgia residents' health and property."⁶¹

There is no basis for the statement that there is a lack of data on criticality of weapons-grade plutonium. As discussed in Section 6.3.4.3.2.4 of the CAR, DCS will use conservative assumptions regarding the isotopic composition of incoming and in-process plutonium. Furthermore, as discussed in Section 6.3.5.3 of the CAR, there are a large number of well-documented criticality benchmark experiment descriptions provided in technical reports and literature applicable to the anticipated MOX Facility plutonium configurations, such as the

⁵⁸ 66 *Fed. Reg.* at 19,996.

⁵⁹ See 10 CFR § 70.22(i) and NUREG-1718, Section 14.5.1 ("[t]he applicant is not expected to submit . . . an emergency plan . . . with the portion of the license application submitted for the construction approval review").

⁶⁰ Furthermore, an applicant need not submit an emergency plan to the NRC if its analyses demonstrate that the maximum dose to a member of the public offsite would not exceed certain limits. See 10 CFR § 70.22(i). As discussed in Chapter 14 of the CAR, the MOX Facility should satisfy those limits. Even though DCS believes its analyses will show that no plan need be submitted to the NRC, DCS does intend to coordinate emergency planning with SRS.

⁶¹ *Request*, at 2.

International Handbook of Evaluations of Criticality Safety Benchmark Experiments. Thus, there is no basis for the claim that weapons-grade plutonium poses any unique criticality concerns.

Furthermore, Section 5.5.3.4 of the CAR analyzes the consequences of a hypothetical criticality accident. This analysis shows that the doses at the controlled area boundary are negligible and well within the limits of 10 CFR § 70.61. GANE has not contested this analysis or provided any other basis for its contention that a criticality accident would affect the health and property of the residents of Georgia. Thus, GANE's contention should be denied.

5. Glovebox around Sintering Furnaces

GANE states that it "shares the concern of the NRC staff regarding the lack of glovebox confinement around the sintering furnaces." GANE alleges that sintering is one of the most dangerous steps in the MOX fabrication process since it takes places at 1700 degrees Centigrade, involves combustible hydrogen gas, and involves the piece of equipment that required the most maintenance according to experience at the MELOX plant.⁶²

First, GANE has not accurately characterized the position of the NRC Staff. As support for its contention, GANE refers to a summary of a meeting between the NRC Staff and DCS in January of 2001, which occurred prior to submission of the CAR. The purpose of the meeting was "to discuss information to be included in the construction authorization request."⁶³ Item 10 in the meeting summary states that the NRC Staff had questioned the lack of confinement around the sintering furnaces and stated that the "[l]ack of confinement around sintering ovens should be

⁶² Request, at 3.

⁶³ Memorandum dated January 24, 2001 from Andrew Persinko to Eric J. Leeds, entitled "Summary of Meeting with Duke Cogema Stone & Webster to Discuss Design basis for the Mixed Oxide Fuel Fabrication Facility," p. 1.

justified in the CAR.”⁶⁴ Thus, the meeting summary cited by GANE does not indicate that the NRC Staff found DCS’ design to be inadequate, but only that the Staff wanted the CAR to contain information justifying the planned design.

Second, Section 5.5 of the CAR contains such a justification. In particular, Section 5.5.2.2 postulates a fire event involving the furnace of the sintering unit and a release of all material at risk in the furnace. To mitigate this event and ensure that doses to the public are acceptable, the MOX Facility contains fire barriers to limit the spread of the fire and confinement systems to limit the spread of radioactive materials. GANE has not identified any deficiency or omission in that discussion, as required by 10 CFR § 2.714(b)(2)(iii). Furthermore, GANE has not provided any basis, facts, or expert opinions that would cast doubt on that justification. Accordingly, the contention does not meet 10 CFR § 2.714 and should be rejected.

6. Treatment of SRS workers

GANE contends that SRS workers who are not affiliated with the MOX Facility should not be subject to the Part 70 worker dose limit, but instead should be regarded as members of the public.⁶⁵ As discussed below, GANE’s contention is legally infirm and should be rejected. 10 CFR § 70.61 imposes two sets of dose limits. One set applies to individuals located outside the “controlled area” (*e.g.*, members of the public) and the other set applies to “workers.” The controlled area is defined by Section 70.61(f) as the area over which the licensee has the authority to exclude or remove personnel and property. A “worker” is defined by Sections 70.61(f) and 70.4 as an individual who receives an occupational dose as defined in 10 CFR § 20.1003. Additionally, under Section 70.61(f), a person who is not a worker may be treated as

⁶⁴ *Id.* at p. 4.

⁶⁵ *Request*, at 3.

such for the purposes of Section 70.61, if he receives training that satisfies 10 CFR § 19.12(a)(1)-(5).

In promulgating Section 70.61, the Commission explicitly stated that “co-located” workers (persons who work outside the licensed facility but on the site) may be treated as “workers” for the purposes of Section 70.61. In fact, the Commission addressed the very situation that exists at SRS, stating:

If the controlled area included the nearby Department of Energy (DOE) facilities, then NRC would consider the personnel working at those facilities to be “workers” for the purposes of the performance requirements of § 70.61, provided the conditions of § 70.61(f)(2) are met. The DOE and its contractors could satisfy these conditions by documenting their compliance with the requirements of 10 CFR 19.12(a)(1)-(5).⁶⁶

As discussed in Section 1.1.2.1 of the CAR, the controlled area for the MOX Facility includes most of SRS. Furthermore, DOE workers will receive training that satisfies Section 19.12(a)(1)-(5). Therefore, it is acceptable to treat DOE personnel at SRS as “workers” for the purpose of Section 70.61.⁶⁷

Based upon the above, GANE’s contention represents an impermissible challenge to the regulations and should be denied.

D. The Alleged Off-Site Impacts of Non-Accidental Releases Are Inadmissible

GANE proposes 18 contentions alleging that the CAR is deficient in its treatment of the potential for off-site impacts from non-accidental releases at the MOX Facility.⁶⁸ As

⁶⁶ *Domestic Licensing of Special Nuclear Material; Possession of a Critical Mass of Special Nuclear Material*, 65 Fed. Reg. 56,211, 56,212 (2000).

⁶⁷ Section 70.4 defines “worker” as any person who receives an occupational dose under 10 CFR §20.1003. Section 20.1003 defines “occupational dose” as the dose received by an individual during the course of employment, whether the radioactive material is in possession of the licensee or another person. Therefore, an SRS worker would also qualify as a “worker” under these definitions.

⁶⁸ *Request*, at 3-9.

demonstrated below, these contentions are also inadmissible.

7. NRC Staff Abilities

GANE contends that the NRC Staff lacks the experience to license facilities that use plutonium, and requests that a “public accounting” of experience be provided.⁶⁹ GANE specifically expresses concern that “[a]n oversight in [the] licensing review . . . may result in off-site contamination which will harm Georgia residents.” This contention appears to have nothing to do with the CAR, but rather with the NRC’s ability to oversee licensing of a MOX Facility.

Contentions regarding the competence of the NRC Staff are not admissible. As the Commission recently held in *Vermont Yankee*, general attacks on the agency’s competence do not raise admissible issues.⁷⁰ Also, in the 1999 Defense Authorization Act, Congress specifically established the NRC as the licensing authority for the MOX Facility.⁷¹ To the extent that this contention challenges that decision, it is an impermissible attack on the statute.

8. Revising the CAR

GANE contends that the “NRC staff continues to raise questions about adequacy of the [CAR] . . . and the [CAR] will probably require extensive revision.”⁷² “A public hearing will provide scrutiny to the evolving [CAR] and the avenue for the public to remain empowered.”

This contention lacks the required specificity and does not identify any specific portions of the CAR that allegedly are inadequate. The contention also raises no genuine issue of material fact or law since it is based upon pure speculation. The NRC has only recently accepted

⁶⁹ *Id.* at 3.

⁷⁰ *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station) CLI-00-20, 52 NRC 151 (2000), slip op. at 8.

⁷¹ See Pub. L. 105-261 § 3134 (amending § 202 of the Energy Reorganization Act).

⁷² *Request*, at 3.

the CAR for docketing.⁷³ The NRC has not yet issued any Requests for Additional Information. Therefore, there is no basis for GANE's claim that the CAR will require extensive revision. Even if that claim were correct, it would be of no consequence since it would not entitle GANE to any relief.

9. Existing Contamination at SRS

GANE alleges that the MOX Facility will be located on a highly contaminated site, and that there are unresolved issues related to converging waste streams from the MOX Facility and other SRS activities.⁷⁴ This contention largely pertains to SRS, not the MOX Facility. To the extent that it pertains solely to SRS, it is outside the jurisdiction of the NRC and outside the scope of this proceeding.

To the extent that the contention alleges that there will be cumulative impacts from the MOX Facility and the existing contamination at SRS, the MOX Facility is being designed so that there are no radioactive liquid effluents.⁷⁵ Therefore, there will be no contamination of groundwater and no "converging waste streams" as a result of normal operation of the MOX Facility. Furthermore, GANE has provided no basis for any allegation that normal operation of the MOX Facility would otherwise result in any appreciable contamination of groundwater. Therefore, GANE's contention does not satisfy 10 CFR § 2.714 and should be denied.

10. The Safety Record of the Parent Companies

GANE contends that the ER is deficient because it "does not include the safety and environmental record of each DCS entity, most especially COGEMA."⁷⁶ GANE goes on to

⁷³ 66 *Fed. Reg.* at 19,995.

⁷⁴ *Request*, at 4.

⁷⁵ See CAR Section 10.1.1.

⁷⁶ *Request*, at 4.

allege that COGEMA's operations in Europe and Canada "compel deep and public inquiry into COGEMA's suitability to engage in MOX manufacture" at SRS.

The MOX Facility applicant is DCS, not COGEMA. DCS' parent companies (including COGEMA) will neither own nor operate the MOX Facility. Furthermore, DCS has not relied upon the technical qualifications of COGEMA or its other parents as the basis for its technical qualifications to design and construct the MOX Facility. Instead, as is discussed in Chapter 4 of the CAR, DCS has established minimum qualifications for the managers responsible for design and construction of the MOX Facility. Therefore, the technical qualifications of DCS' parents are not material to the proceeding.

The Commission has previously denied proposed contentions that focus on the technical qualifications of the parents of a license applicant, rather than the applicant itself.⁷⁷ For example, in the license transfer proceedings for Oyster Creek, the Commission found that any relevance of petitioner's allegation of a parent company's improper "staffing decisions" in facilities outside the United States was both remote and speculative," because it was the applicant's parent, and not the applicant that was managing those facilities.⁷⁸ A similar result should be applied to GANE's contention.

11. Plutonium Contamination of Water Sources

GANE states that recent studies have shown that plutonium is more soluble in water than previously thought, that radioactive elements from SRS have been detected in groundwater, and that the health of the public is threatened by the potential for plutonium to contaminate water

⁷⁷ *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151 (2000), slip. op. at 11; *GPU Nuclear Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-06, 51 NRC 193, 209-10 (2000).

⁷⁸ *GPU Nuclear Inc.*, 51 NRC at 209-10.

sources.⁷⁹ On its face, this contention does not even mention the MOX Facility. Accordingly, it should be denied for lack of relevance to this proceeding.

Furthermore, since the MOX Facility is being designed so that there will be no radioactive liquid effluents.⁸⁰ Therefore, there will be no contamination of groundwater as a result of normal operation of the MOX Facility. Furthermore, GANE has provided no basis for any allegation that normal operation of the MOX facility would otherwise result in any appreciable contamination of groundwater. Therefore, GANE's contention does not satisfy 10 CFR § 2.714 and should be denied.

12. Exposure to Persons Who Eat Fish

GANE contends that people downstream of SRS fish the Savannah River for their main diet, and that traditional people eat the whole fish including the bones which increases their risk of radiation uptake and exposure.⁸¹ On its face, this contention does not even mention the MOX Facility or the dose estimates prepared by DCS for the MOX Facility. Accordingly, it should be denied for lack of relevance to this proceeding.

Furthermore, since the MOX Facility is being designed so that there are no radioactive effluents, people who eat fish downstream of SRS will receive no radiation uptake or exposure as a result of normal operation. Since GANE has provided no basis for any contrary conclusion, its contention should be denied.

13. Handling of Liquid Wastes

GANE contends that MOX fuel fabrication will "produce an enormous inventory of liquid waste on the overburdened Savannah River Site" and "[e]stimates for amounts of liquid

⁷⁹ *Request*, at 4.

⁸⁰ *See* CAR Section 10.1.1.

⁸¹ *Request*, at 5.

waste and methods for handling the waste have not been established.”⁸² GANE also alleges that the SRS tank farm that will accept the MOX Facility liquid wastes is unsafe, and that “the added waste burden [from the MOX Facility] would create a clear threat to Georgia public health.”

The majority of this contention relates to the safety of the SRS tank farm and not to the MOX Facility. This aspect of the contention is outside the scope of NRC’s jurisdiction. The SRS liquid waste storage tanks are owned and maintained by DOE. Maintenance of the DOE tanks is not the subject of this proceeding. Accordingly, GANE’s contention raises an issue for which no meaningful relief can be granted, and it should be rejected.

GANE also appears to misunderstand the CAR. To the extent that GANE is referring to the MOX Facility when it states that “methods for handling the waste have not been established,” GANE is incorrect. Sections 10.1.1 and 10.1.4.1 of the CAR state that liquid wastes will not be discharged as effluent from MOX fuel fabrication, and that instead the liquid waste will be conveyed to SRS. Accordingly, GANE’s contention raises no genuine issue of material fact or law.

Finally, as with all of GANE’s contentions, this contention lacks the required specificity and references to the specific portions of the CAR or ER that are in dispute. Thus, it does not satisfy the requirements in 10 CFR § 2.714(b)(2) and accordingly should be rejected.

14. Transport of Plutonium Oxide

GANE contends that the “transportation of plutonium oxides to [SRS] threatens life and health along every transportation corridor.”⁸³ All plutonium oxide shipped into SRS will be under the jurisdiction and control of the DOE.⁸⁴ Plutonium oxide being transported to SRS

⁸² *Id.*

⁸³ *Id.*

⁸⁴ SPD Final EIS, Sec. 2,4,4,1, p. 2-37.

would be taken to the PDCF, which will likewise be under the jurisdiction and control of the DOE.⁸⁵ Thus, this issue is outside the scope of this proceeding, and is an issue for which no meaningful relief can be granted. Accordingly, the contention should be rejected.

15. Safeguards for Plutonium

GANE contends that “[t]he best security is inadequate to safeguard weapons-grade plutonium from theft, diversion or acts of terrorism in transport to, accounting for and transport from [SRS] as fuel.”⁸⁶ As stated above, plutonium transport to SRS will be conducted by DOE. Therefore, security for such transportation is outside the scope of this proceeding.

“Accounting for” plutonium while at the MOX Facility will be covered by a Fundamental Nuclear Material Control Plan. Such a plan, however, is not required to be submitted with the CAR, but instead may be submitted as part of the application for the possession and use of licensed material.⁸⁷ Accordingly, at this stage of the proceeding, it is premature to raise contentions regarding plutonium “accounting” at the MOX Facility. A Physical Security Plan for the MOX Facility will also be submitted with the application for the possession and use of licensed material.⁸⁸

Finally, DCS need not develop a security plan for transport of MOX fuel from the MOX Facility to commercial reactors. Although physical protection is required for plutonium “delivered to a carrier for transportation pursuant to part 70,”⁸⁹ a licensee is exempt if the plutonium is “being transported by the United States Department of Energy transport system.”⁹⁰

⁸⁵ *Id.*

⁸⁶ *Request*, at 5.

⁸⁷ MOX Facility CAR, Sec. 13.2; NUREG-1718, Section 13.2.5.1.

⁸⁸ *Id.* at Sec. 13.1; NUREG-1718, Section 13.1.5.1.

⁸⁹ 10 CFR § 73.20(a).

⁹⁰ 10 CFR § 73.6(d).

MOX fuel will be transported by DOE²¹ and therefore, under NRC's regulations, DCS does not need a security plan for shipment of MOX fuel. If GANE is challenging the exemption provided by NRC's regulations, that challenge cannot form the basis of an admissible contention. "[A] petitioner in an individual adjudication cannot challenge generic decisions made by the Commission in rulemakings."²²

Accordingly, each component of this contention is outside the scope of this proceeding and should be denied.

16. Radiation Monitoring

GANE alleges that the "specifications for monitoring radiation emissions to air, land and water are insufficient and unreliable." GANE further alleges that the public health is already threatened by historically poor DOE and SRS data on radiation releases and exposures.²³

To the extent that GANE is complaining about existing DOE practices and data at SRS, its contention is outside the scope of this proceeding (which is limited to the MOX Facility, not SRS in general). Furthermore, NRC has no jurisdiction over existing DOE activities at SRS.

GANE has also provided no basis for its contention that radiation monitoring for the MOX Facility will be insufficient or unreliable. Provisions for effluent and environmental monitoring for the MOX Facility are described in Chapter 10 of the CAR. Contrary to 10 CFR § 2.714(b)(2)(iii), GANE has not identified any deficiency or omission in these provisions. Accordingly, this contention should be denied.

²¹ *SPD Final EIS*, Summary, Table S-2.

²² *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151 (2000), slip op. at 8 (quoting *North Atlantic Energy Service Company* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 217 n. 8 (1999)).

²³ *Request*, at 6.

17. Decommissioning and Deactivation

GANE appears to suggest that there is no decommissioning plan and no financial assurance for decommissioning, thus creating “a new and dangerous exception to NRC requirements.”⁹⁴ Under the contract between DCS and DOE, DCS will deactivate the MOX Facility and return it to DOE’s custodianship once MOX fuel fabrication activities are complete.⁹⁵ Thus, DCS has no responsibility for decommissioning and need not submit a decommissioning plan or provide financial assurance for decommissioning.

Even if DCS had such a responsibility, this contention is outside the scope of this phase of the proceeding since the proceeding focuses on the CAR and does not involve any consideration of the need for, or adequacy of, decommissioning plans. In fact, there is no NRC requirement to include such a plan as part of a license application, and 10 CFR § 70.38(d) does not require a licensee to develop such a plan until the license has expired or the licensee seeks to terminate the license. Thus, this contention represents an improper challenge to the NRC’s regulations.

GANE next argues that deactivating, rather than decommissioning, the MOX Facility will allow the facility to be used in the future for other plutonium-related missions.⁹⁶ Any decisions that DOE may make as to future use of the MOX Facility after DCS’ mission is complete, the NRC license is terminated, and the facility is turned back over to DOE’s custody

⁹⁴ *Id.* at 6-7.

⁹⁵ MOX Facility CAR, Sec. 1.2.4.1; *see also Questions & Answers from the Public Meetings on the Proposed MOX Fuel Facility, Question #121* (“DCS will be responsible through deactivation, and the NRC license will extend until deactivation is completed. Following deactivation, responsibility for the facility will return to the DOE, and the DOE will be responsible for decommissioning”).
<http://www.nrc.gov/NRC/NMSS/MOX/MEETINGSUMMARY/moxqa.html>

⁹⁶ *Request*, at 6.

are clearly beyond the scope of this proceeding and the NRC's jurisdiction. Even if GANE's assertions were correct, it would not be entitled to any relief.

GANE also alleges that the NRC Staff's development of a generic Standard Review Plan (SRP) for the MOX Facility license application review process "fosters public perception that there is a hidden agenda . . . to reestablish a reprocessing program . . ." ⁹⁷ GANE's contention is clearly based upon speculation. Moreover, it fails to allege any dispute of fact or law regarding the adequacy of the CAR or the acceptability of the MOX facility. Even if its assertions were true, GANE would not be entitled to any relief in this proceeding.

18. Financial Stability of the Parent Companies

GANE questions the financial stability of DCS as the applicant, because one of its parent companies, Stone & Webster, has "filed for bankruptcy twice and changed ownership" since DCS was created.⁹⁸

GANE's concerns related to Stone & Webster are inadmissible. Stone & Webster is not the applicant and will neither own nor operate the MOX Facility. The MOX Facility applicant is DCS, which is not relying on the financial qualifications of its parents. Therefore, any focus on the parent companies of DCS is misplaced. Finally, as discussed in Chapter 2 of the CAR, the DOE is funding the construction, operation, and deactivation of the MOX Facility through its contract with DCS. As a result, the financial qualifications of DCS are irrelevant.

⁹⁷ *Request*, at 7.

⁹⁸ *Id.*

19. Limits on the Amount of Plutonium Processing

GANE states that the CAR fails to establish a limit on plutonium to be processed at the MOX Facility. It argues that this could result in an aging, open-ended MOX manufacturing program.⁹⁹

There is no basis in NRC's regulations to limit the total amount of material to be processed over time (as distinct from the total amount that may be possessed at one time). For example, 10 CFR § 70.22(a)(4) requires an application to specify the "amount" of special nuclear material the applicant proposes to use, but not the integrated total over time. The reason for this is obvious—the amount that may be possessed at one time has implications for safety (*e.g.*, criticality, radiation protection, waste, safeguards and security, and associated design considerations). The total amount that may be possessed over time does not have any implications for safety—*e.g.*, it does not affect the adequacy of the design or programs for the facility.

Accordingly, GANE's contention should be rejected, because it has no basis in NRC's regulations and does not raise an issue that is material to the public health and safety.

20. Applicability and Coverage of the Price-Anderson Act

GANE alleges that there are unspecified "unresolved questions" about the protections afforded by the Price-Anderson Act and that Price-Anderson "gravely limits financial protection

⁹⁹ *Id.* at 7.

to Georgians potentially affected by the . . . the MOX program at SRS.”¹⁰⁰ The Price Anderson Act will apply to the MOX fuel fabrication facility.¹⁰¹

Even if GANE’s allegations were correct, they would clearly constitute an impermissible challenge to a federal statute. In any event, DOE has agreed that the protections of the Price-Anderson Act apply and has included a provision in its contract with DCS that confirms the applicability of the Price-Anderson Act protection to the MOX Facility.¹⁰² Thus, there is no unresolved issue regarding application of the Price-Anderson Act to the MOX Facility.

21. Westinghouse/BNFL

GANE alleges that Westinghouse/BNFL discriminates against workers and that the Canadian government has found that COGEMA shows a “chronic disregard of worker safety.”¹⁰³

Westinghouse/BNFL is not designing, constructing, or operating the MOX Facility. Therefore, any concerns with Westinghouse/BNFL activities at SRS are irrelevant and are outside the scope of this proceeding and outside the jurisdiction of the NRC.

Similarly, GANE’s allegation regarding COGEMA are irrelevant to this proceeding. As stated previously, any focus on any of DCS’ parents (*e.g.*, COGEMA) is misplaced, since they will neither own nor operate the MOX Facility, and DCS has not relied upon their technical qualifications as part of its application.¹⁰⁴

¹⁰⁰ *Id.* at 8.

¹⁰¹ See *Questions & Answers from the Public Meetings on the Proposed MOX Fuel Facility, Question #22* (“Pursuant to provisions of the Price-Anderson Act, NRC staff understands that DOE intends to indemnify DCS for any damages due to accidents, clean-up costs, or other similar expenses which involve the risk of public liability connected with the MOX project at the Savannah River site.”). <http://www.nrc.gov/NRC/NMSS/MOX/MEETINGSUMMARY/moxqa.html>

¹⁰² MOX Facility CAR, Sec. 2.5.

¹⁰³ *Request*, at 8.

¹⁰⁴ *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151 (2000), slip. op. at 11; *GPU Nuclear Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-06, 51 NRC 193, 209-10 (2000).

22. Depleted Uranium

GANE contends that depleted uranium used in the Balkan wars contained fission products, and that fission products “pose a grave health risk for SRS workers handling depleted uranium in MOX manufacture.” GANE further speculates that there may be a need to process the depleted uranium to remove fission products, and that such processing would generate waste.¹⁰⁵

GANE has provided no basis for its contention. It has provided absolutely no basis for believing that the source of depleted uranium for the MOX Facility is the same as the source used in the Balkan wars, or that the depleted uranium used for the MOX Facility will contain fission products.

Even if all of GANE’s premises were accepted, GANE has provided no basis for contending that any fission products in depleted uranium would pose a hazard to the health and safety of SRS workers. GANE has not identified the amount of fission products in the depleted uranium used in the Balkan wars, nor has it provided a basis for any allegation that those amounts would pose a health hazard to workers or would require processing. Furthermore, Chapter 9 of the CAR describes MOX Facility design features to protect against radiation hazards and the MOX Facility radiation protection program, and Section 10.1.4 of the CAR describes DCS’ plans for waste management and waste minimization. GANE has not identified any defect or omission in those controls, as is necessary for an admissible contention under 10 CFR § 2.714(b)(2)(iii). Therefore, its contention should be rejected.

¹⁰⁵ Request, at 8.

23. Computer Software

GANE alleges that the computer software industry has inherent safety issues, and implies that DCS will be using “unaccountable and unregulated software.”¹⁰⁶

GANE provides no basis or support for these allegations. Even if such allegations were true, GANE provides no basis for a contention related to the MOX Facility. As indicated in the NRC’s Notice, DCS has submitted a MOX Project Quality Assurance Plan (MPQAP). Section 3.2.7 of the MPQAP provides an extensive set of controls for ensuring the adequacy of computer software, including computer software verification and validation, software configuration control, verification reviews, software problem reporting and corrective action, software procurement controls, and computer program testing. GANE does not appear to be aware of these controls, and certainly has not identified any defect or omission in those controls as required by 10 CFR § 2.714(b)(2)(iii). Accordingly, its contention should be rejected.

24. Inter-Agency Gaps

GANE contends that there is the “potential for regulatory oversight gaps from overlapping and novel interagency responsibilities of DOE, NRC, and EPA . . .”¹⁰⁷ GANE lists a number of areas that it believes will be “potentially negatively impacted.”

GANE has provided no basis for arguing that there will be interagency gaps. In any event, even if there were interagency “gaps,” such a contention would not be admissible in this proceeding because it raises an issue that would not entitle GANE to any relief (*i.e.*, the relative jurisdictions of NRC, DOE, and EPA cannot be changed in this proceeding). Therefore, the contention should be rejected.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 9.

E. Any Potential for Accidental Releases of Radiation from MOX Reactors Is Outside the Scope of this Proceeding

GANE contends that the CAR is deficient because it does not address the potential for accidental releases from commercial nuclear reactors using MOX fuel. In particular, it alleges that there are “unresolved issues” regarding “production and testing of MOX lead test assemblies” (LTAs) (25th bullet); there are “questions concerning quality assurance for DOE production of plutonium dioxide” and impact on “core-melt” (26th bullet); there is an increased risk of “cladding failure” from “gallium-contaminated plutonium made into fuel” (27th bullet); and there is an “ice condenser containment vulnerability” (28th bullet).¹⁰⁸

Each of these contentions is outside the scope of this proceeding. The agency action at issue is the NRC’s review of the CAR for the MOX Facility. This proceeding does not encompass issues related to the fabrication or use of LTAs or the use of MOX fuel in reactors.¹⁰⁹ Accordingly, each of these four contentions is inadmissible.

F. Alleged Deficiencies in the Public Process Are Outside the Scope of this Proceeding

GANE ends its Request for Hearing with three contentions that do not identify deficiencies in the CAR, but rather request changes in the process for public participation in the CAR approval process. Each of these contentions is an impermissible collateral attack on either NRC procedure established in the NRC’s Notice, NRC regulations, or the Atomic Energy Act. Accordingly, none of the three contentions is admissible.

¹⁰⁸ Id. at 9-10.

¹⁰⁹ As for bullet 26, GANE acknowledges that it is DOE, and not DCS, that is responsible for plutonium dioxide production. Challenges to DOE activities are outside the scope of this proceeding.

29. Proprietary Version of the CAR

GANE states that the proprietary portions of the CAR “must be made available to representatives of the public”¹¹⁰ GANE’s contention is inconsistent with NRC rules. Under those rules, proprietary information is entitled to protection from release to the public.¹¹¹ Accordingly, GANE’s contention should be denied.

Furthermore, the NRC’s Notice specifically establishes a procedure for determining whether, and under what circumstances, a party may obtain access to such information:

Access to the proprietary versions of the CAR, for purposes of submitting any contentions based on withheld information, will be subject to later determination by the presiding officer, after rulings on standing are made.¹¹²

Thus, GANE’s contention is also inconsistent with the NRC’s Notice and accordingly should be rejected.

30. Premature NRC Review

GANE argues that it is premature for the NRC to review the CAR, because NRC has not completed its scoping process for drafting the EIS. In particular, GANE complains that NRC’s review of the CAR may be complete before a final EIS is issued.¹¹³

GANE’s contention has no basis in NRC regulations. There is nothing in those regulations that requires the NRC to complete its EIS scoping process or to issue an EIS before it completes its review of the CAR. Furthermore, there is no practical reason for the NRC to defer its safety review of the CAR pending completion of its environmental review, since the safety review is not dependent upon the environmental review. In this regard, it is standard NRC

¹¹⁰ *Request*, at 10.

¹¹¹ *See, e.g.*, 10 CFR § 2.790.

¹¹² 66 *Fed. Reg.* at 19,996.

¹¹³ *Request*, at 10.

practice to conduct its safety and environmental reviews in parallel. Therefore, GANE's contention has no legal or practical basis, and should be denied.¹¹⁴

31. Judicial Review

GANE contends that the "nature of judicial review has not yet been established," and expresses a preference for a "three-member Atomic Safety & Licensing Board" due to "complex and difficult issues."¹¹⁵

GANE's statement regarding judicial review is unclear. If GANE is referring to review by a federal court, then the contention is inconsistent with the Administrative Orders Review Act and the AEA, which provide the federal courts of appeals with exclusive jurisdiction to review final licensing decisions of the NRC.¹¹⁶

If GANE is referring to the NRC adjudicatory process, there is no requirement for a three-judge panel in either 10 CFR Part 2, Subpart L, or the NRC'S Notice. Additionally, GANE provides no justification for appointment of a three-judge panel. GANE's contentions are not "complex or difficult." In fact, as this Answer demonstrates, most are outside the scope of the proceeding, and none of them are admissible.

Accordingly, this contention should be denied.

¹¹⁴ In the context of license renewal, the Licensing Board recently rejected a contention that argued that the NRC should prepare an EIS under Part 51 before conducting its safety review of a license renewal application under Part 54. See *Florida Power & Light Co.* (Turkey Point, Units 3 and 4), LBP-01-06, 2001 WL 261863, at *8-9 (2001), slip op. at Section II.A.

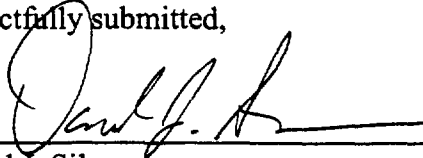
¹¹⁵ *Request*, at 10.

¹¹⁶ See 28 U.S.C. §§ 2342(4); 42 U.S.C. § 2239.

IV. CONCLUSION

For the reasons discussed above, GANE does not have either organizational or representational standing to intervene in this proceeding. Even if GANE did have standing, it has offered no admissible contentions. Therefore, GANE's Request for Hearing should be denied.

Respectfully submitted,



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Dated June 1, 2001

CERTIFICATE OF SERVICE

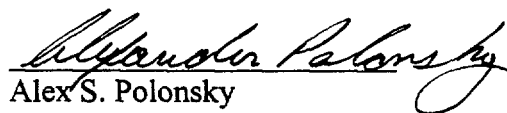
I hereby certify that copies of "Duke Cogema Stone & Webster's Answer to Georgians Against Nuclear Energy's Request for Hearing" and Notice of Appearance of Alex S. Polonsky were served upon the persons listed below by U.S. mail, first class, postage prepaid, this 1st day of June, 2001.

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Alex S. Polonsky

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Presiding Officer

In the Matter of DUKE COGEMA
STONE & WEBSTER

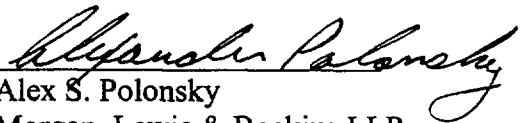
Mixed Oxide Fuel Fabrication Facility
(Construction Authorization Request)

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) Docket No. 70-03098
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)

NOTICE OF APPEARANCE

The undersigned, being an attorney at law in good standing admitted to practice before the courts of the District of Columbia, hereby enters his appearance as counsel on behalf of Applicant, Duke Cogema Stone & Webster, in any proceeding related to the above-captioned matter.

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Dated: June 1, 2001